

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

A.G., a minor child; et al.,

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Plaintiffs

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vs.

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Case No: 2:05-CV-1090-MEF

**AUTAUGA COUNTY BOARD OF
EDUCATION, et al.,**

*

*

Defendants.

**B.H., a minor child, by and through
his mother and next friend, D.S.**

*

*

Plaintiff,

*

vs.

*

Case No: 2:06-CV-0393-MEF

**AUTAUGA COUNTY BOARD OF
EDUCATION, et al.,**

*

*

Defendants.

PLAINTIFFS' MOTION TO COMPEL

COME NOW the plaintiffs, by and through counsel, and in response to defendants' objection to plaintiffs' subpoenas and objection to plaintiffs' sixth request for production file this their Motion to Compel and in support thereof state as follows:

1. On September 14, 2004 plaintiffs issued subpoenas to non-party individuals, Angel Garrett and James Abraham, to produce the transcripts of their depositions given in *Jane Doe, et al., v. Autauga County Board of Education, et al., Case No: 02-04-CV-1155-MEF*. Both of these

individuals provided deposition testimony in this case that they were in possession of their transcripts in *Jane Doe*. While these individuals are defendants in the *Jane Doe* case, they are not defendants in this case.

2. Likewise, subsequent to the depositions in this case of defendants Butler and Cleveland, plaintiffs requested defendants to produce a copy of the Butler and Cleveland deposition transcript from their depositions in the *Jane Doe* case.

3. Pursuant to the subpoenas issued to Garrett and Abraham and the request for production to Butler and Cleveland the defendants made their respective objections. In an effort to resolve the dispute, pursuant to local rules and the prior order of this Court regarding discovery disputes (Doc. 67), counsel for the plaintiff arranged a telephone conference with defendants' counsel, the same set for November 20, 2006, to discuss this issue as well as others.

4. Counsel discussed the substance of defendants' respective objections to the production of the deposition transcripts and plaintiffs' counsel noted that the objections appeared to be premised solely on the existence of two protective orders in the *Doe* case. Plaintiffs' counsel understood defendants' counsel to say that absent an order from the Court, defendants would not comply with the subpoenas or request for production.

5. Plaintiffs' counsel inquired whether there existed any legal basis for the objection other than the *Doe* protective orders and plaintiffs' counsel understood the response to be that there could be, however, the response did not include any further basis for objection.

6. Plaintiffs' counsel informed counsel for the defendants that a motion to compel would be forthcoming.

7. That plaintiffs' counsel has exhausted all available alternatives to the filing of this motion. As the defendants sole basis of objection is the *Doe* protective orders, and as defendants

have stated no other basis in the telephone conference, plaintiffs request the Court enter such order as to allow defendants' compliance with the subpoena and request for production.

WHEREFORE THE PREMISES CONSIDERED, plaintiffs request the Court to direct compliance with the discovery requests for the production of the *Doe* deposition transcripts of Butler, Cleveland, Garrett and Abraham and/or provide to plaintiffs such other, further and different relief to which they may be entitled.

Respectfully submitted on this the 28 day of November, 2006.

s/Robert D. Drummond, Jr.
Robert D. Drummond, Jr.
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s/Michael J. Crow

Certificate of Service

I hereby certify that a copy of the foregoing was served electronically on counsel for the defendants, Mark S. Boardman, Esq. and Katherine C. Hortberg, Esq., by filing the same electronically with the Clerk of the Court, United States District Court for the Middle District of Alabama, and Terry Wright, 1268 Plum Street, Prattville, AL 36066 on this the 28th day of November 28, 2006.

s/Robert D. Drummond, Jr.